

# EXHIBIT 9

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

In re: WELLBUTRIN XL ANTITRUST LITIGATION	)	Case No. 2:08-cv-2431
THIS DOCUMENT RELATES TO:	)	<b>DIRECT PURCHASER PLAINTIFF</b>
Direct Purchaser Actions	)	<b>ROCHESTER DRUG</b>
	)	<b>COOPERATIVE, INC.’S</b>
	)	<b>OBJECTIONS AND RESPONSES</b>
	)	<b>TOGSK’S FIRST SET OF</b>
	)	<b><u>INTERROGATORIES</u></b>
	)	
	)	<b><u>Hon. Mary A. McLaughlin</u></b>
	)	
	)	

Pursuant to Fed. R. Civ. P. 33, Direct Purchaser Plaintiff Rochester Drug Co-Operative (“Plaintiff” or “RDC”) hereby responds to SmithKline Beecham Corporation and GlaxoSmithKline plc’s (collectively “GSK”) First Set of Interrogatories to Plaintiff (“Interrogatories”).

## GENERAL OBJECTIONS

The following General Objections apply to and are hereby incorporated by reference in response to each interrogatory.

1. Plaintiff objects to the instructions and definitions purportedly made a part of the Interrogatories to the extent they are vague, indefinite, ambiguous, or seek to impose duties and/or responsibilities beyond those which are required by the Federal Rules of Civil Procedure or the Local Rules of the United States District Court for the Eastern District of Pennsylvania.

2. Plaintiff objects to the Interrogatories to the extent that the burden or expense of the proposed discovery outweighs its benefit.

3. Plaintiff objects to the definition of “you”, “your”, “plaintiff”, “plaintiffs”, and “Direct Purchaser Plaintiffs” as over broad and vague. For purposes of responding to the Interrogatories, the terms shall be interpreted as to mean the Plaintiffs in this action.

4. Plaintiff objects to the Interrogatories to the extent they seek information that is unreasonably and needlessly broad in scope, or otherwise not relevant to any claim or defense in this case or reasonably calculated to lead to the discovery of admissible evidence.

5. Plaintiff objects to the Interrogatories to the extent they seek information immune from discovery by virtue of the attorney-client privilege, work-product immunity, common interest privilege, or any other applicable privilege or immunity. Any inadvertent production of such protected information shall not be deemed a waiver of any privilege with respect to such information or any work product that may attach thereto.

6. Plaintiff objects to the Interrogatories to the extent they may be construed to require Plaintiff to search for and disclose information not within Plaintiff’s possession, custody, or control.

7. Plaintiff objects to the Interrogatories to the extent that they seek information already in the possession of or otherwise available to Defendants including, but not limited to, information in the possession of Defendants or in the public records which are accessible to all parties.

8. Plaintiff objects to the Interrogatory to the extent that Defendants assert Plaintiff’s responses thereto constitute an adoption or acceptance of terms or definitions that Defendants have employed. In responding to the Interrogatories, Plaintiff does not adopt, embrace or accept any term or definition employed by Defendants. These

responses are made based upon Plaintiff's interpretation of words contained in the Interrogatories unless a specific definition or instruction has been agreed upon.

9. Plaintiff objects to the Interrogatories to the extent they seek documents and information concerning purchases of pharmaceutical products, either prescription or over the counter, other than brand name Wellbutrin XL and generic Wellbutrin XL, as being overly broad and unduly burdensome. Information on named Plaintiffs' purchases of other drugs is not relevant to the claims or defenses in this case, is not reasonably calculated to lead to discovery of admissible evidence, and is more burdensome than beneficial to collect and produce.

10. Plaintiff objects to the Interrogatories to the extent they request information concerning the resale of pharmaceutical products by named Plaintiffs as being overbroad, unduly burdensome, and irrelevant as a matter of law. Moreover, because Plaintiff has alleged an overcharge theory of damages and is not seeking any damages relating to lost sales, profits, or other "downstream" or "net" injury, such information is not relevant to the claims or defenses in this case and is not reasonably calculated to lead the discovery of admissible evidence.

11. Plaintiff objects to the definition of "Antidepressant" included in the Interrogatories as overly broad, vague, ambiguous, and unduly burdensome.

12. Plaintiff's responses notwithstanding objections are not intended to waive or prejudice any objections Plaintiff has raised. Plaintiff expressly reserve the right to objects at trial on relevance or any other grounds to the admission or use of any interrogatory response provided herein for any purpose, including impeachment.

13. All responses given below incorporate the above General Objections and no response given by Plaintiff shall be deemed to constitute a waiver of any such objections.

14. Plaintiff reserves the right to supplement or amend these responses and objections.

### **INTERROGATORIES**

1. Identify all persons, including, but not limited to, your current and former employees, who have, claim to have, or whom you believe may have knowledge or information relating to this Litigation, any fact alleged in the pleadings (as defined in FED. R. CIV. P. 7(a)) filed in this Litigation, or any fact underlying the subject matter of this Litigation, and identify the nature and substance of the knowledge you believe each such person may have.

#### **Response**

Plaintiff objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects in particular to the request that Plaintiff identify current and former employees who “may” have “information” “relating” to “any fact” in the pleadings, or “any fact” “underlying” the subject matter of the litigation.

Notwithstanding the foregoing, Plaintiff respectfully refers Defendants to Plaintiff’s Fed. R. Civ. P. 26(a)(1) Initial Disclosures, which identify individuals likely to have discoverable information that Plaintiff may use to support its claims or defenses.

2. For each year since January 1, 2003, identify all persons, including, but not limited to, your current and former employees, who have responsibilities relating to the purchase or sale of Antidepressants, including, but not limited to, Wellbutrin XL.

#### **Response**

Plaintiff objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible

evidence. In addition, Plaintiff respectfully refers Defendants, in particular, to General Objections Nos. 9, 10 and 11. Notwithstanding the foregoing, Plaintiff states that the following persons employed by Plaintiff are responsible for, have knowledge of, or are otherwise involved in, communicating with suppliers regarding Plaintiff's purchases of Wellbutrin XL and generic Wellbutrin XL: Laurence F. Doud III and Edward Kirker.

3. For each year since January 1, 2003, and by month within each such year, identify your purchases of Wellbutrin XL, including for each transaction the date and location of the transaction, the name of the purchaser, the quantity of Wellbutrin XL purchased, the price charged per unit, the amount of any discounts, coupons, or rebates that you received, and the total amount you paid.

**Response**

Pursuant to Fed. R. Civ. P. 33(d), because the burdens of ascertaining this information are the same for Plaintiff and Defendant, Plaintiff will produce transaction data concerning its purchases of Wellbutrin XL and generic Wellbutrin XL from which the information called for by this Interrogatory can be ascertained.

4. For each year since January 1, 2003, by month within each such year, identify your sales of Wellbutrin XL, including for each transaction the date and location of the transaction, the name of the customer, the quantity of Wellbutrin XL sold, the price charged per unit, the amount of any discounts, coupons, offsets, or rebates that the customer received, the amount of any insurance or other health benefit co-payment that applied to the transaction, the name of each insurance carrier or other health benefit provider that covered any portion of the purchase price, the name of the insurance or other health benefit plan(s) pursuant to which coverage was provided, and the total amount the customer paid.

**Response**

Plaintiff objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Plaintiff respectfully refers Defendants, in particular, to General Objection No. 10. Notwithstanding the foregoing, Plaintiff states that it neither has nor had contracts with any of its customers requiring the customer to purchase a fixed amount

of any product regardless of price, and that it is a wholesaler and therefore receives no amounts in insurance or “other health benefit.”

5. Identify and describe how you decide which Antidepressants to sell and how to sell them, including: (i) whether or not to stock both the brand-name and generic versions of a given Antidepressant product; (ii) whether or not to stock more than one generic version or label of a given Antidepressant product; (iii) whether or not to stock a brand-name Antidepressant but not its generic counterpart; (iv) whether or not to stock a generic Antidepressant but not its brand-name counterpart; (v) how much to charge for generic and brand-name Antidepressants; and (vi) how much to differentiate between the price you charge for generic and brand-name versions of a given Antidepressant product.

**Response**

Plaintiff objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Plaintiff respectfully refers Defendants, in particular, to General Objections Nos. 9, 10 and 11. Notwithstanding the foregoing, Plaintiff states that it is a wholesaler and therefore purchases what it believes it can resell, based on estimates of demand derived from its customers.

6. For each year since January 1, 2003, and by month within each such year, identify all insurance providers, third party payors, or other health benefit providers from whom you received any payments, reimbursements, or compensation relating to the sale of Wellbutrin XL, including for each transaction the provider’s name(s) and address(es), the plan name(s), whether the plan was employer-sponsored, and if so, by whom, the policy number(s), the group I.D. number(s), the patient name, and whether the patient was the principal insured or a dependant of a principal insured.

**Response**

Plaintiff objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Plaintiff respectfully refers Defendants, in particular, to General Objection No. 10. Notwithstanding the foregoing, Plaintiff respectfully refers Defendants to its response to Plaintiff’s response No. 4.

7. Identify all damages you claim to have suffered. Please include in your response the total amount of damages claimed and how such damages were calculated.

**Response**

Plaintiff objects to this Interrogatory as premature because Defendants have neither produced documents nor witnesses from which the specification called for by this Interrogatory can be provided. Plaintiff also objects to this interrogatory as premature to the extent that the information sought may be the subject of expert reports and testimony, which will be disclosed in accordance with the Orders of the Court and the applicable rules. Notwithstanding the foregoing, Plaintiff states that it seeks damages measured as overcharges, not other types of damages, and respectfully refers Defendants to Plaintiff's Fed. R. Civ. P. 26(a)(1) Initial Disclosures, which describes Plaintiff's present information and intention with respect to computation of damages.

8. Identify and describe every agreement or communication reflecting, referring, or relating to your employment or retention of counsel in this action, and any arrangement regarding fees, costs or expenses, rights to share in a potential recovery, and fee-sharing in this action with any person not a member of Plaintiff's counsels' firm(s).

**Response**

Plaintiff objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Plaintiff respectfully refers Defendants, in particular, to General Objections No. 5.



Respectfully yours,

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*Counsel for Direct Purchaser Plaintiffs*

As to Answers:

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Dated: July 20, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I am one of plaintiffs' attorneys and that on this date, I caused copies of the papers annexed hereto to be served on all counsel of record in this proceeding via first class mail and email.

**/s/ David S. Nalven**